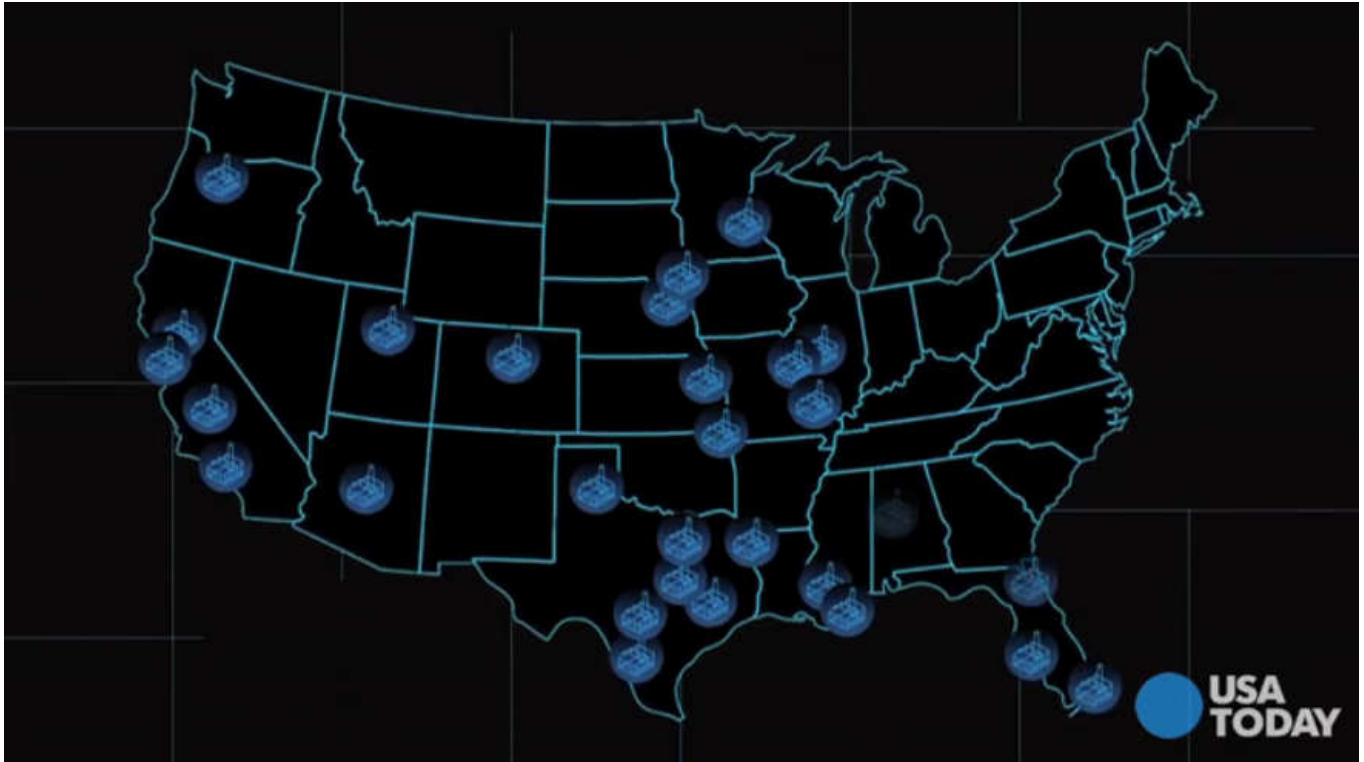


Old lead factories may stick taxpayers with cleanup costs



Hundreds of neighborhoods across the country are near old factory sites where poisonous lead has been found in the soil. Who is responsible for cleaning up the danger?

Alison Young, USA TODAY 9:43 a.m. EST December 19, 2012

Making polluters pay for cleanups is a cornerstone of environmental laws. But in the case of old smelter sites, some firms have either reorganized or used bankruptcy to shed financial responsibility.



(Photo: Eileen Blass, USA TODAY)



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PHILADELPHIA – Several companies manufactured lead for more than 140 years at a massive factory surrounded by homes in the city's Port Richmond area: John T. Lewis & Bros., National Lead, Anzon and others. The factory is long gone, and tests show dangerous levels of lead in nearby yards – putting children at risk of being poisoned by playing in the dirt.

Yet if homeowners want their yards to be made safe, it's up to them – not the companies or the government -- to pay the costs of replacing contaminated soil or capping it with cement. That's the message residents say the Environmental Protection Agency delivered at neighborhood meetings this year.



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"That was 100% clear – that it was on us," said Lisa Conway, who attended two of the meetings and hopes the new backyard sod the family had installed will protect their 8-month-old son.

"I think it's kind of shady that nobody wants to take responsibility for all the years and decades of irresponsible contamination," said Christina DiPietro-Sokol, who has covered her backyard in artificial turf to keep the family's children and their huge dog from coming into contact with the dirt. Estimates to cement over it were in the thousands of dollars, she said. "We have two kids in Catholic school. We can't do that."

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Lisa Conway, 31, and husband Mike Conway, 32, at home with their 7 1/2-month-old son, Mason. They live near the former John T. Lewis/National Lead/Anzon lead factory site in Philadelphia. (Photo: Eileen Blass, USA TODAY)

Making polluters pay for cleanups is a cornerstone of federal and state environmental laws. Although many of the companies that operated the old lead factories highlighted in USA TODAY's ongoing "Ghost Factories" investigation ceased to exist decades ago, some companies associated with the sites are still in business today.

Yet some of these companies have undergone corporate reorganizations or used carefully worded language in purchase agreements to limit their environmental liabilities. Others have used bankruptcy to shed financial responsibility for pollution.

FULL COVERAGE: [Ghost Factories: Poison in the ground](http://www.ghostfactories.usatoday.com)

(<http://www.ghostfactories.usatoday.com>)

INTERACTIVE: [An invisible danger in our yards](http://usatoday30.usatoday.com/news/nation/smelting-lead-contamination)

(<http://usatoday30.usatoday.com/news/nation/smelting-lead-contamination>)

STORY: [Part One: Closed lead factories leave poison in yards](http://usatoday30.usatoday.com/news/nation/story/2012-04-19/smelting-lead-contamination-government-failure/54399578/1)

(<http://usatoday30.usatoday.com/news/nation/story/2012-04-19/smelting-lead-contamination-government-failure/54399578/1>)

STORY: [Part Two: Some areas contaminated by lead fallout](http://usatoday30.usatoday.com/news/nation/story/2012-04-20/smelting-lead-contamination-soil-testing/54420418/1)

(<http://usatoday30.usatoday.com/news/nation/story/2012-04-20/smelting-lead-contamination-soil-testing/54420418/1>)

And in some cases, even when companies were intact and could have been held responsible, government regulators failed to act in time, a USA TODAY review shows.

The result is that taxpayers or homeowners often have to bear the cost of cleaning up the contamination -- if it happens at all. State and federal cleanup programs have limited money to take care of "orphan" environmental sites that have no private party to pay the bill. And internal memos show regulators can be reluctant to use government

money to clean up lead in urban soil – even next to old lead factories – because some of the contamination may also have come from lead-based paint or cars that once burned leaded gasoline, non-factory sources the agencies say they don't have the authority or money to address.

Left undisturbed, lead dust can remain on the surface of soil for hundreds of years, posing a risk of reduced IQ and other health problems when children ingest even tiny amounts by putting dusty hands or toys in their mouths.

Officials at the EPA declined repeated requests for interviews since October. In a written statement, the EPA said it can hold companies responsible for cleanups only if it can demonstrate they have liability under the federal Superfund law, which provides the agency the authority to address environmental hazards. At the John T. Lewis factory site in Philadelphia, the EPA said it's still evaluating options to address soil contamination in the area, including looking for financially responsible parties.

Proving responsibility can be difficult when it comes to long-closed factory sites, and legal experts said companies look for ways to shield themselves.

The costs can be staggering: Cleaning the yard around one home in Portland, Ore., will cost up to \$90,000, regulators say, and will involve removing 20 tons of lead- and arsenic-contaminated soil. The EPA has spent nearly \$250 million addressing contamination around more than 10,000 homes near a large lead smelter in Omaha.

"There are enormous amounts of money at issue in these cases. It's worth fighting for and it's worth looking for a way to avoid liability on the part of responsible parties," said environmental attorney Linda Bullen, a former EPA regional counsel now with a law firm in Las Vegas.

Robert Glicksman, professor of environmental law at George Washington University Law School, said: "The trick is distinguishing when they cross the line from clever manipulation and taking advantage of loopholes, to situations when they're abusing the process and should be held responsible for the liability."

In general, successor companies have no liability for contamination at old factories previously operated by the companies they acquired. But there are exceptions, Glicksman said, including if it can be demonstrated that the purchasing corporation is a mere continuation of the previous corporation, if there was essentially a de facto merger of the companies or if the transaction was fraudulent and intended to escape liability.

Proving those things can require interviewing former employees and gaining access to company records – which may no longer exist.

"The reality is, with many of these old sites, it's very difficult to find records," said John Cruden, who previously oversaw environmental enforcement for the U.S. Justice Department and now is president of the Environmental Law Institute in Washington, D.C.

"In truth, there's a lot of times where there simply is no viable party, that company is long gone," Cruden said. "But that's why the Superfund exists."

Yet there's a big problem, he notes: The federal Superfund for environmental cleanups lost its main funding source in 1995 – taxes on oil and chemicals, and an environmental tax on corporations, which were allowed to expire. The result is that the Superfund trust fund's balance had dropped to \$137 million by the start of 2009 from a peak in 1997 of \$5 billion (in constant 2009 dollars), according to a 2010 report by the Government Accountability Office. The report noted that the EPA's estimated costs to clean up existing Superfund sites exceeded current funding levels from Congress. The EPA said this month that the current balance of the trust fund is now about \$80 million.

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So, in many cases, finding viable companies that bear legal responsibility is the key to addressing contamination. Doing so can involve unraveling tangled corporate histories. And sometimes, even when responsible companies are still in business, regulators fail to act in time.

Shedding liabilities with bankruptcy

In April, USA TODAY's "Ghost Factories" investigation revealed that the EPA was given a list in 2001 of more than 460 potentially unrecognized former sites of lead factories, which primarily operated and shut down during the 1930s to 1960s. The EPA was warned by the private researcher who compiled the list from old factory directories that many of them had likely contaminated the soil of surrounding properties with a toxic layer of lead fallout.

Despite the warnings, USA TODAY's examination of sites on the list found that federal and state regulators had done little to investigate many of them or warn thousands of families and children in harm's way.

One of those unaddressed sites is in Pittsburgh's Bloomfield neighborhood. The former Federated Metals factory (<http://usatoday30.usatoday.com/news/nation/smeltering-lead-contamination#sites/70>) there processed lead, tin, copper and other metals from 1893 to about 1951. The factory is gone, but its vandalized guard shack remains.



Most of the factory buildings of the Federated Metals plant in Pittsburgh's Bloomfield neighborhood were demolished in 2009, but the vandalized shell of the old guard shack remains. (Photo: Alison Young, USA TODAY)

Although the company that operated the factory for many of its final years – the giant metals corporation ASARCO – is still in business, it says it has no responsibility for investigating or cleaning up any potential toxic fallout on nearby homes and a playground. That's because ASARCO went through bankruptcy and agreed by December 2009 to pay \$1.79 billion in cleanup costs to settle EPA and state environmental claims at more than 80 sites across the country. The EPA and state regulators never filed a claim for the Pittsburgh Federated Metals site – even though four years earlier EPA investigators had written a report about the site (<http://www.documentcloud.org/documents/227736-site-70-screening-site-investigation-draft-2005.html>) warning of contamination risks and the need for further investigation.

ASARCO's vice president for environmental affairs, Thomas Aldrich, said the Pittsburgh Federated Metals site was never mentioned during the bankruptcy proceedings. "Apparently, EPA knew about the site and decided not to file a claim regarding it," Aldrich said. "Any action would now be barred by the bankruptcy discharge."

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The EPA said that's likely the case. The agency said it didn't have enough evidence during ASARCO's bankruptcy that a cleanup was needed at the Pittsburgh location.

And the EPA still hasn't done the additional assessment recommended by its contractors in September 2005 to determine whether the factory "contaminated nearby residential areas." That assessment is still planned, the EPA said recently, but no date was given. Pennsylvania environmental regulators haven't evaluated the site, either, and said they are "awaiting the results of EPA's study."

Meanwhile, parents like Michelle Mazzotta worry about their children playing in nearby Osceola Parklet, a popular neighborhood gathering spot that's within a few hundred feet of the now-vacant Federated Metals site. "It's kind of sad," she said, after being told about the EPA's 2005 report. "This is a big community with a lot of children in it."



Michelle Mazzotta of Pittsburgh said she was unaware a large metal refining factory once operated in her neighborhood. She now worries about her children playing in a nearby park. (Photo: Alison Young, USA TODAY)

Pittsburgh city officials were unaware of the potential risks identified by the EPA until contacted by USA TODAY and will be asking the state's environmental agency to do soil sampling in the area, city spokeswoman Joanna Doven said.

Federated Metals' buildings were demolished in 2009, after years of being used to store vehicles for an auto repair business.

The University of Pittsburgh Medical Center, which cleared the factory buildings and some nearby parcels, wants to build a parking garage. UPMC spokeswoman Susan Manko said it would be "inappropriate" for the hospital to share its private environmental assessments of the property.

"Nothing in those studies indicated there was an immediate environmental concern but that UPMC may have to undertake some environmental cleanup prior to developing the property, which of course we would do," she said.

Taxpayers are now facing the bill for any action needed around the old factory.

"EPA is planning a reassessment of this site to determine appropriate next steps and further actions," the agency said.

Purchasing assets, without liabilities

Bankruptcy is one way companies can shed environmental liabilities.

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In other cases, decades of sales, divisions and mergers have obscured the corporate lineage of companies that operated old lead factories.

The former Glidden Co., which dates to the 1900s, once made lead-based paint and had a Metals Refining division that operated plants across the country, including sites in Cleveland (<http://usatoday30.usatoday.com/news/nation/smelting-lead-contamination#sites/129>) and Hammond, Ind. (<http://usatoday30.usatoday.com/news/nation/smelting-lead-contamination#sites/114>), records show. But the company that today sells paint under the Glidden name notes that it is not the same company that operated the old lead factories and said it is not responsible for them. AkzoNobel obtained the Glidden trademark by buying another company that had previously purchased only certain parts of still another company that had acquired the old Glidden Co.

Two other old lead factory sites featured in USA TODAY's "Ghost Factories" investigation can be traced to Kaydon Corp., a publicly traded company with headquarters in Ann Arbor, Mich., and its Canfield Technologies division.

One of them is the former Thos. F. Lukens Metal Co., which operated a factory at the corner of Hedley and Bath streets in Philadelphia's Bridesburg neighborhood. A company called Lukens Metal became a part of Canfield Technologies about 30 years ago, said Chris Synosky, a longtime Canfield sales manager. Synosky said factory operations had ceased at the location and Canfield used the site for several years as a distribution warehouse.

The former Lukens factory site is across the street from homes where children live. Tests by USA TODAY have found hazardous levels of lead in nearby yards. The EPA says it plans to assess the area in 2013.

The second site is the former M.C. Canfield Sons factory site (<http://usatoday30.usatoday.com/news/nation/smelting-lead-contamination#sites/214>) in Newark, which is now under part of a condominium complex. Tests by New Jersey regulators – in response to USA TODAY's investigation – have found high levels of lead in the soil and have asked the EPA to do a cleanup.

Kaydon vice president and general counsel Debra Crane said the company has no responsibility at the two factory sites. That's because Kaydon purchased only certain assets of Canfield Technologies in 2000 – and that purchase did not include the company's historical environmental liabilities. "We did not assume any liabilities under that asset purchase agreement," she said.

Crane added: "It's kind of a stretch, I think, to say the fact that we wanted to use a name that has recognition for marketing purposes is sufficient to require us to be liable for operations and manufacturing facilities that we've never seen, never walked on, never touched and had no connection to."

Records filed with the Securities and Exchange Commission show Kaydon "acquired substantially all of the assets" of Canfield. The unpurchased parts of Canfield Technologies remained behind in a company that was renamed as DGRM Corp. during the month of the sale. DGRM Corp. stopped filing annual reports for years after the sale and had its New Jersey corporation status revoked.

Daniel Grossman, listed as Canfield Technologies board chairman on the August 2000 name-change document, declined to be interviewed or to answer questions about what happened to DGRM Corp. and whether it has any responsibility to investigate and remediate contamination around the sites in Philadelphia and Newark.

In an e-mail, Grossman said he'd "never heard of Thos. F. Lukens Metal Co." and that the "Canfield Technologies owned by me and my partners certainly never acquired Thos. F. Lukens Metal Co."

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Grossman acknowledged involvement with a Lukens firm with a slightly different name: Lukens Metal Corp. – Corp. instead of Co., and no first name or middle initial.

"Lukens Metal Corp. was merely a name-saving corporation with no assets or operations," Grossman said, noting that Canfield and later Kaydon marketed a few products under the Lukens brand.

"Whether 50-70 years ago there was a business relationship between an earlier Canfield and Thos. F. Lukens Metal Co. I have no way of knowing," Grossman said. "But even if there were, I do not believe this would have any legal relation to Canfield Technologies or Kaydon Corporation."



The site of the former M.C. Canfield Sons factory in Newark, which once made solder and other lead-containing products, is now under part of a large condominium complex. Solder is a type of mixed-metal, which historically often contained lead. When melted it was used to join other metals together. (Photo: John DaSilva)

Pennsylvania corporation records show

(<http://www.documentcloud.org/documents/486237-site-67-lukens-metal-corp-records-1984-to-2003.html>) that the Lukens Metal Corp. that Grossman and Canfield transferred to Kaydon listed its address as "Hedley & Bath Streets" in Philadelphia when it was incorporated in 1984. That's the same location that historical Sanborn fire insurance maps and other records show was once the Thos. F. Lukens Metal Co. factory site. The factory on Hedley Street used a shortened name -- "Lukens Metal Co." -- in advertisements for its solder products (<http://www.documentcloud.org/documents/486237-site-67-lukens-metal-corp-records-1984-to-2003.html>) in the 1950s.

Canfield Technologies transferred the newer Lukens Metal Corp. and assigned all of its capital stock to Kaydon in 2000, according to the asset purchase agreement (<http://www.documentcloud.org/documents/472499-8k-exhibit-canfield-asset-purchase-agreementex2-2.html>) Kaydon filed with the Securities and Exchange Commission. Kaydon's CEO in 2001 signed papers dissolving this Lukens, records filed with Pennsylvania show.

Grossman didn't respond to questions about both Lukens companies being listed at the same Hedley Street location. Crane, Kaydon's attorney, said the two Lukens-named firms were "two separate companies," and that the Lukens Metal Corp. purchased by Kaydon never acquired the real estate at Hedley and Bath streets.

Crane said Kaydon has "absolutely nothing at all in our files about any of the old Canfield Technologies sites. But we wouldn't because we weren't interested in them, we didn't want them."

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Grossman didn't respond to questions about the Newark location. New Jersey corporation records show that M.C. Canfield Sons changed its name to Canfield Technologies in 1996.

New Jersey environmental regulators investigating the contaminated Newark condo property also have made some initial connections between M.C. Canfield Sons and Canfield Technologies and DGRM Corp. and shared them with the EPA, according to an August 2012 state memo (<http://www.documentcloud.org/documents/486445-responsible-party-memo-m-c-canfield-site.html>).

The EPA declined to be interviewed about the sites or the potential liabilities of the companies. If the agency were to incur cleanup costs, "EPA would then make a determination about a company's environmental liabilities," the agency said in a statement.

Frustration in Philadelphia

In Philadelphia, where residents say they are being told to clean up their own yards around the old John T. Lewis-National Lead-Anzon factory site (<http://usatoday30.usatoday.com/news/nation/smelting-lead-contamination#sites/57>), it may be difficult or perhaps impossible to hold corporations accountable.

Pennsylvania environmental regulators allowed Anzon, the last company operating the plant, to enroll in a voluntary state program to clean up just the factory's property around 1998 – without requiring any investigation of potential toxic fallout on the surrounding neighborhood. Successful completion of the program, known as Act 2 or the state's Land Recycling Program, generally gives companies liability relief, with a few exceptions, from "ever having to do more cleanup in the future ... either because the DEP wanted it, or because citizens sued for more cleanup," according to a Q&A document on the department's website.

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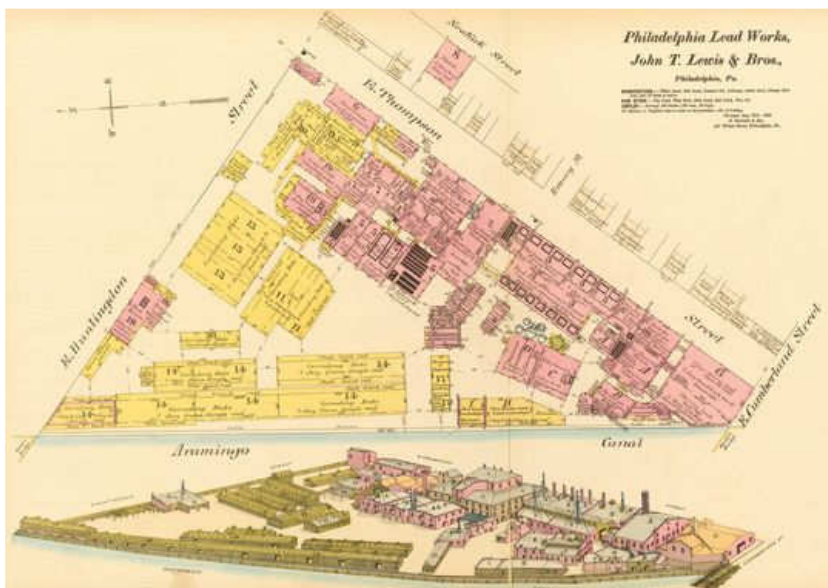
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The operations of the John T. Lewis & Bros. lead factory are shown in this 1889 industrial site map and drawing. Various companies did lead manufacturing at the site for more than 140 years. (Photo: Courtesy of The Bridgeman Art Library)

Even though homes surrounded the factory, which had operated since the 1800s, the Pennsylvania Department of Environmental Protection says no testing was required to determine the extent of contamination beyond the factory's borders.

"There is no such requirement under Act 2 for sites being remediated for non-residential use. These are voluntary cleanups conducted to bring former industrial sites back into productive reuse," the DEP said in a statement.

The factory property was turned into a commercial area with shops and restaurants.

The DEP declined to be interviewed about whether the state did enough during the Anzon cleanup to protect the health of nearby residents. The department said generally that Act 2's "liability protection only applies to the area that was investigated and remediated." DEP officials wouldn't discuss whether, as a practical matter, the passage of years has made it impossible to make Anzon pay for possible future costs. Many of Anzon's assets were sold to another company years ago, records show.

Sandy Salzman, one of the neighborhood residents who attended EPA meetings this year, said federal officials weren't optimistic about getting the factory's operators to pay for any cleanup.

"They said that would be really difficult because most of them aren't around anymore," said Salzman, executive director of the New Kensington Community Development Corp.

And the EPA said it had no federal funds for testing or cleanup, recalled Maggie O'Brien, president of Fishtown Action, a neighborhood group that hosted an EPA meeting in April. "They were basically acting like they weren't under any obligation to do anything about it other than to tell us," O'Brien said. "They couldn't or wouldn't do anything."



EPA officials met with neighborhood leaders, including Sandy Salzman, earlier this year to discuss soil tests showing lead contamination in the yards of some homes near the former John T. Lewis-National Lead-Anzon factory site. Federal officials were not optimistic about getting the factory's former operators to pay for any cleanup, said Salzman, executive director of the New Kensington Community Development Corp. (Photo: Eileen Blass, USA TODAY)

The EPA is aware of community frustration. An [internal agency e-mail recounts](http://www.documentcloud.org/documents/528323-site-57-epa-email-about-fishtown-action-meeting.html) (<http://www.documentcloud.org/documents/528323-site-57-epa-email-about-fishtown-action-meeting.html>) how during a community meeting in March a neighborhood group official "expressed a strong opinion that EPA should be doing more than just outreach and education as we really seemed to drop the ball since the facility closed in 1996."

Anzon was a part of the Cookson Group, a British company that continues to be a leading global supplier to the steel and foundry castings industries. Spokespeople for the Cookson Group didn't respond to repeated requests for interviews or comment. Officials at NL Industries, the company formerly called National Lead, also didn't respond to interview requests about their operation of the plant, which court records say was from 1960 to 1979.

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The factory's operators did emergency cleanups along "nearby streets" in 1988 and 1991 after a plant fire and accident, according to the EPA. Around the same time, residents sued NL Industries and Anzon claiming that the plant's operations harmed their families. According to court records in the class action, Anzon entered into a settlement in the case before the trial ended. Because NL Industries didn't settle, in 1994 the case went to the jury to decide each company's liability. The jury found negligence by Anzon, including that it was liable for \$2 million for testing to determine cleanup needs in one of three geographic zones involved in the case. The jury found no negligence on the part of National Lead.

The EPA said it assessed the site in 1995, but no further action was taken "in light of pending sampling and cleanup work to be conducted " by Anzon as a part of the court settlement. Exactly what cleanup Anzon did is unclear; Cookson officials wouldn't answer USA TODAY's questions.

The EPA sent investigators back to the neighborhood in 2005, after the site was included on the 2001 list of unrecognized lead-smelter sites. They recommended soil tests, which were done in 2009 (<http://www.documentcloud.org/documents/243668-dtn-0757-john-t-lewis-trip-report-final-redacted.html>). Of the 17 samples from four homes' yards, 14 had elevated lead levels, most of them well above the EPA's hazard standard for residential soil where children play.

USA TODAY tested dozens of soil samples from the neighborhood last year and also found dangerous levels of lead in area yards.

Still, internal EPA documents show that agency staff questioned whether the lead in the yards came from the massive lead factory, or perhaps from lead paint or the tailpipes of cars that once burned leaded gasoline. Urban areas, the agency has said, have many sources of lead, and the EPA is authorized to address only contamination that can be tied to factories.

At the John T. Lewis site in Philadelphia: "Continued assessment of these properties may yield properties with elevated levels of lead without clear information on the major source contributor," Jack Kelly, the EPA official assigned to the site, wrote in a "Hot Issue" memo in May (<http://www.documentcloud.org/documents/528304-epa-memo-to-regional-administrator-may-2012.html>) to the EPA's regional administrator. "The urban lead-in-soil problem arguably exceeds EPA's Superfund resources making a traditional removal approach (dig & cover) likely infeasible."

It's unclear how much of EPA's approach at the site is driven by the Superfund's lack of money, and how much is driven by public health, science and what the agency is allowed to do under the law.

John Pendergrass, a senior attorney at the Environmental Law Institute, says that while the EPA needs to trace lead to a factory, "they don't need to trace all the lead" found in the area to one specific source. Pendergrass noted that it's possible for the EPA to do lead "species" testing that can help the agency show lead came from the factory. "I would think in this case there would be evidence they could find to show that it comes from a smelter that had been there that long," he said.

In a statement, the EPA said it "has made no decisions regarding the source of lead in sampled soils, the potential liability of any party, or response actions to be taken" and that it is still "considering the value" of doing lead species testing in the neighborhood.

The EPA said it has issued information requests to companies believed to be successors to the businesses that operated the facility and has evaluated their responses. The agency didn't name the companies or provide further details.

"The search for financially viable potentially responsible parties is ongoing," the EPA said.

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